

PT 97-7  
Tax Type: PROPERTY TAX  
Issue: Government Ownership/Use

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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TEACHER'S RETIREMENT	)	
SYSTEM of the STATE	)	
of ILLINOIS,	)	DOCKETS: 93-16-1323
APPLICANT	)	93-16-1396
	)	
v.	)	P.I.N.S: 03-35-200-049
	)	through
	)	03-35-200-054
THE DEPARTMENT OF REVENUE,	)	and
STATE OF ILLINOIS	)	17-10-210-003
	)	17-10-210-004
	)	17-10-210-005
	)	17-10-210-009
	)	17-10-210-010
	)	17-10-210-019
	)	17-10-210-020

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RECOMMENDATION FOR DISPOSITION

APPEARANCES:

Ms. Kelly Keeling of Klafter & Burke appeared on behalf of the Teacher's Retirement System of the State of Illinois; Mr. Everett Hill of Arnstien & Lehr appeared on behalf of the Village of Mount Prospect.

SYNOPSIS:

These proceedings raise the issue of whether any of the above-captioned properties qualify for exemption from 1993 real estate taxes under 35 ILCS 205/19.5.<sup>1</sup> In relevant part, that provision exempts "[a]ll property of any kind belonging to the State of Illinois." The controversy arose as follows:

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<sup>1</sup>. In People ex rel Bracher v. Salvation Army, 305 Ill. 545 (1922), the Illinois Supreme Court held that the issue of property tax exemption will depend on the statutory provisions in force at the time for which the exemption is claimed. This applicant seeks exemption from 1993 real estate taxes. Therefore, the applicable statutory provisions are those contained in the Revenue Act of 1939, 35 ILCS 205/1 *et seq.*

On December 1, 1993, the Teacher's Retirement System of the State of Illinois (hereinafter the "TRS" or the "applicant"), through counsel, filed a real estate exemption complaint with the Cook County Board of (Tax) Appeals (hereinafter the "Board") pertaining to Permanent Index Numbers 17-10-210-003, 17-10-210-004, 17-10-210-005, 17-10-210-009, 17-10-210-010, 17-10-210-019 and 17-10-210-020. It filed another complaint with the Board as to Permanent Index Numbers 03-35-200-049 through 03-35-200-054 on January 10, 1994. Both complaints allege that the subject properties were owned by the State of Illinois and therefore exempt from taxation under 35 ILCS 205/19.5.

Following appropriate notice, the Village of Mount Prospect (hereinafter "intervenor"), through counsel, filed a petition to intervene on March 24, 1994 with respect to Permanent Index Numbers 03-35-200-049 through 03-35-200-054. Thereafter, the Board recommended to the Department of Revenue, (hereinafter the "Department") that the requested exemptions be denied. On December 22, 1995, the Department accepted these recommendations by issuing two certificates finding that the properties were not in exempt ownership.

TRS filed a timely request for hearing as to both properties January 8, 1995. After a pre-trial conference, an evidentiary hearing was conducted on applicant's request on July 31, 1996. Following submission of all evidence and a careful review of the record, it is recommended that all properties at issue in Docket Nos. 93-16-1323 be exempt from real estate tax for the entire 1993 tax year. It is further recommended that the Department's decision in Docket No. 93-16-1396 be modified to reflect leasehold assessments consistent with Section 19.5 of the Revenue Act of 1939.

#### **FINDINGS OF FACT:**

##### **A. Case No. 93-16-1323**

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 2 and Dept. Ex. No. 3A.

2. The subject properties consist of four vacant parcels of land and two vacant industrial buildings. Dept. Group Ex. No. 1. The vacant lands are located in Mount Prospect, Illinois and identified by Permanent Index Numbers 03-35-200-049 through 03-35-200-051 and 03-35-200-053. *Id.*

3. One of the vacant buildings is 42,120 square feet and located at 411 Kingston Court, Mount Prospect, Illinois. It is identified by Permanent Index Number 03-35-200-049. *Id.*

4. The other vacant building is 34,475 square feet and located at 451 Kingston Court, Mount Prospect, Illinois. It is identified by Permanent Index Number 03-35-200-054. *Id.*

5. TRS acquired its ownership interest in the subject properties via a trustee's deed dated September 12, 1991. Applicant Ex. No. 5.

B. Case No. 93-16-1396

1. The Department's jurisdiction over this matter and its position therein are established by the admission into evidence of Dept. Group Ex. No. 1 and Dept. Ex. No. 3.

2. The subject properties are located at the northwest corner of Grand Avenue and McClurg Court, Chicago, IL. Dept. Group. Ex. No. 1. They are identified by Permanent Index Numbers 17-10-210-003, 17-10-210-004, 17-10-210-005, 17-10-210-009, 17-10-210-010, 17-10-210-019 and 17-10-210-020. *Id.*

3. Photographs demonstrate that all of the subject properties are improved with nothing except paved parking lots. Applicant Ex. No. 11.

4. TRS acquired its ownership interest in the subject properties via a special warrantee deed dated March 31, 1993. Applicant Ex. No. 4.

5. Before applicant acquired its ownership interest, TRS's predecessor in title leased the subject properties to the 326 South Wells Corporation for use as a parking facility. Applicant Ex. No. 8. However, on November 30, 1993, TRS (through its duly appointed agent, Capital Associates Realty Advisors), terminated the lease. *Id.* The termination, which was effective December 31,

1993, allowed TRS to enter into a lease with the Northwestern Medical Faculty Foundation, Inc. (hereinafter "NMFF"). Applicant Ex. Nos. 8, 9.

6. Under the terms of the lease (dated September 29, 1993) NMFF was to use the demised premises for no purpose other than providing parking to NMFF employees and patients who worked in, and had appointments at, the 541 North Fairbanks Court office building. Applicant Ex. No. 9.

**CONCLUSIONS OF LAW:**

On examination of the record established in Docket No. 93-16-1323, this applicant has demonstrated by the presentation of testimony or through exhibits or argument, evidence sufficient to warrant exemption from real estate taxes for the 1993 assessment year. Accordingly, under the reasoning given below, the determination by the Department that all parcels at issue in Docket No. 93-16-1323 do not qualify for such exemption under 35 ILCS 205/19.5 should be reversed.

Examination of the record in Docket No. 93-16-1396 establishes that the applicant has presented sufficient evidence and argument to warrant a partial exemption from real estate taxes for the 1993 assessment year. Therefore, the determination by the Department that the parcels at issue in Docket No. 93-16-1396 do not qualify for such exemption under Section 19.5 should be modified as follows: With respect to applicant's ownership interest, said parcels should be exempt from real estate taxation for 76% of the 1993 assessment year. However, pursuant to Section 19.5 of the Revenue Act of 1939, such exemption should not bar appropriate leasehold assessments and collection of taxes thereon. In support thereof, I make the following conclusions:

A. Constitutional and Statutory Considerations

Article IX, Section 6 of the Illinois Constitution of 1970 provides as follows:

The General Assembly by law may exempt from taxation only the property of the State, units of local government and school districts and property used exclusively for

agricultural and horticultural societies, and for school, religious, cemetery and charitable purposes.

The power of the General Assembly granted by the Illinois Constitution operates as a limit on the power of the General Assembly to exempt property from taxation. The General Assembly may not broaden or enlarge the tax exemptions permitted by the Constitution or grant exemptions other than those authorized by the Constitution. Board of Certified Safety Professionals, Inc. v. Johnson, 112 Ill.2d 542 (1986). Furthermore, Article IX, Section 6 is not a self-executing provision. Rather, it merely grants authority to the General Assembly to confer tax exemptions within the limitations imposed by the Constitution. Locust Grove Cemetery Association of Philo v. Rose, 16 Ill.2d 132 (1959). Moreover, the General Assembly is not constitutionally required to exempt any property from taxation and may place restrictions or limitations on those exemptions it chooses to grant. Village of Oak Park v. Rosewell, 115 Ill. App.3d 497 (1st Dist. 1983).

In furtherance of its Constitutional mandate, the General Assembly enacted the Revenue Act of 1939, 35 **ILCS** 205/1 *et seq.* The provision of that statute governing disposition of the present matter is found in Section 205/19.5, which, in relevant part, exempts from real estate taxation "[a]ll property of every kind belonging to the State of Illinois."

Some sections of the Revenue Act impose use requirements as prerequisites for property tax exemption.<sup>2</sup> However, the sole test for the exemption of property of the State of Illinois is ownership. Public Building Commission of Chicago v. Continental Illinois National Bank & Trust Company of Chicago, 30 Ill.2d 115 (1963). Such ownership must nevertheless be exclusive without any outstanding legal or equitable interests in others. People ex. rel. Olmsted v. University of Illinois, 328 Ill. 377 (1927) (hereinafter "Olmsted").

#### B. Rules of Construction and the Burden of Proof

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<sup>2</sup>. See, 35 **ILCS** 205/19.2 (Religious Institutions); 35 **ILCS** 205/19.3 (Burial Grounds); 35 **ILCS** 205/19.7 (Charitable Institutions).

It is well established in Illinois that a statute exempting property or an entity from taxation must be strictly construed against exemption, with all facts construed and debatable questions resolved in favor of taxation. People Ex Rel. Nordland v. Home for the Aged, 40 Ill.2d 91 (1968); Gas Research Institute v. Department of Revenue, 154 Ill. App.3d 430 (1st Dist. 1987). Based on these rules of construction, Illinois courts have placed the burden of proof on the party seeking exemption, and, have required such party to prove, by clear and convincing evidence, that it falls within the appropriate statutory exemption. Immanuel Evangelical Lutheran Church of Springfield v. Department of Revenue, 267 Ill. App.3d 678 (4th Dist. 1994).

The aforementioned rules bear special importance to the instant case because applicant's only witness, Mr. Thomas J. Pabian, was not employed by TRS<sup>3</sup> and therefore, had no firsthand knowledge as to its operations. Accordingly, I conclude that applicant has failed to sustain that part of its burden of proof which (if only by implication) requires that applicant establish TRS's operations through legally competent testimony. Nevertheless, I can obtain insight into such operations by taking administrative notice of the applicable enabling legislation. People v. The Illinois Toll Highway Commission, et al., 3 Ill.2d 210 (1954), (hereinafter "ITHC"); Olmsted, supra; Southern Illinois University Foundation et al v. Booker, 98 Ill. App.3d 1062 (5th Dist. 1981 (hereinafter "Booker"); Jones v. Jones-Blythe Construction Company, 150 Ill. App.3d 53 (4th Dist. 1986), (hereinafter "Jones"); Guse v. Board of Trustees of the Public School Teachers Pension and Retirement Fund of Chicago, 203 Ill. App.3d 111 (1st Dist. 1990) (hereinafter "Guse").

#### C. TRS's Organizational Structure

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<sup>3</sup>. Mr. Pabian was (and currently is) employed by Capital Associates Realty Advisors, a real estate investment management firm that was retained to act as TRS's agent with respect to the subject properties. Tr. pp. 10, 18.

Article 16 of the Illinois Pension Code, 40 **ILCS** 5/16-101 *et seq.*, creates and governs administration of the Teachers' Retirement System of the State of Illinois. Specifically, Section 5/16-101 provides that:

Effective July 1, 1939, there is created the "Teachers Retirement System of the State of Illinois" for the purpose of providing retirement annuities and other benefits for teachers, annuitants and beneficiaries. *All of its business shall be transacted, its funds invested, and its assets held, in such name.* (Emphasis added).

40 **ILCS** 5/16-101.

The term "teacher," as defined in Section 5/16-106, includes:

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(2) Any educational, administrative, professional or other staff employed in any facility of the Department of Children and Family services, the Department of Mental Health and Developmental Disabilities, or the Department of Rehabilitation Services in a position requiring certification under the law governing the certification of teachers, and any person who (i) works in such a position for the Department of Corrections, (ii) was a member of this System on May 31, 1987, and (iii) did not elect to become a member of the State Employees Retirement System pursuant to Section 14-108.2 of this Code;

(3) Any regional superintendent of schools, assistant regional superintendent of schools, State Superintendent of Education; any person employed by the State Board of Education as an executive; any executive of the boards engaged in the service of public common school education in school districts covered under this system of which the State Superintendent of Education is an ex-officio member;

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(5) Any person employed by the retirement system who is certified under the law governing the certification of teachers;

(6) Any educational, administrative, professional or other staff employed by and under the supervision and control of a regional superintendent of schools, provided such employment position requires the person to be certified under the law governing the certification of teachers and is in accordance with a joint agreement authorized by the School Code or by federal legislation;

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(8) Any officer or employee of a statewide teacher organization who is certified under the law governing certification of teachers provided: (i) the individual had previously established credible service under this Article; (ii) the individual files with the system, on or before January 1, 1990, an irrevocable election to become a member, and (iii) the individual does not receive credit for such service under any other Article of this Code.

40 **ILCS** 5/16-106.

Membership in the TRS is composed of "all teachers employed after June 30, 1939 who become members as a condition of employment on the date they become teachers." 40 **ILCS** 5/16-123. However, teachers employed by cities and school districts with populations that exceed 500,000 cannot be members of the TRS pursuant to 40 **ILCS** 5/16-102.

TRS annuities are financed through member contributions. 40 **ILCS** 5/16-152. These contributions are derived from a fixed percentage of each member's annual salary. *Id.* Each member's employer is responsible for picking up any contributions due on or after July 1, 1983. 40 **ILCS** 5/16-152.1(b).

The State of Illinois (hereinafter "the State") is required to pick up the contributions of regional superintendents who are members of the system. 40 **ILCS** 5/16-152.1. In addition, Sections 158(a) and 158(b) mandate that the State pay any contributions owed from the common school fund and other State funds in accordance with Section 18-7 of The School Code. (105 **ILCS** 5/1-1 *et seq.*) Payment of such contributions, as well as all pensions, retirement annuities, death benefits, refunds, and other benefits granted under TRS's enabling statute or assumed by TRS, together with all expenses in connection with the administration and operation thereof, are financial obligations of the State under 40 **ILCS** 5/16-158(c).

The State Treasurer is ex-officio custodian of all TRS funds under 40 **ILCS** 5/16-187. Furthermore, Sections 5/16-184, 5/16-185 and 5/16-186.3 require the State fund certain TRS reserves. Active members of the Employees' Retirement System of Illinois are permitted, under Section 5/16-131.6, to transfer to the



TRS any credits and credible service earned while employed as teachers by the Department of Corrections.

Section 5/16-163 of the enabling statute provides for creation of a 10-member board, known as the Board of Trustees of the Teachers Retirement System of the State of Illinois [hereinafter "the Board"], which is authorized to "carry out the provisions of this Article and is responsible for the general administration of the system." 40 **ILCS** 5/16-163. The Board is composed of the (State) Superintendent of Education, ex officio, who serves as president of the Board; 4 persons, not members of the (TRS) system, who shall be appointed by the Governor and hold no other office within the State; 4 teachers elected by contributing members and one annuitant elected by the annuitants of the system. *Id.*

The Board is vested with the following powers: "[t]o sue and be sued *in the name of the board*," 40 **ILCS** 5/16-171; "[t]o recieve any gifts or legacies *for the benefit of the retirement system*" 40 **ILCS** 5/16-177; to "rent, lease or acquire such space as *may be necessary for the proper administration of the system*," 40 **ILCS** 5/16-181.1; to "enter into such agreements and to execute such documents as it [the Board] determines necessary to complete any investment transaction[,]" provided that "[a]ll investments shall be clearly held and accounted for to *indicate ownership by the system*." 40 **ILCS** 5/16-179. (emphasis added in all instances).

#### D. Analysis of the Relevant Exemption

As noted *supra* at p. 5, the sole test for exemption under Section 19.5 is ownership. The deed admitted into evidence as Applicant Ex. No. 5 establishes that TRS owned all of the parcels at issue in Docket Number 93-16-1323 throughout the 1993 assessment year. However, the deed admitted as Applicant Ex. No. 4 establishes that TRS did not acquire its ownership interest in the properties at issue in Docket No. 93-16-1396 until March 31, 1993.

Section 27(a) of the Revenue Act of 1939 provides, in relevant part, that:

The owner of real property in any year shall be liable for the taxes of that year ...[.] ... The purchaser of real property on January 1 shall be considered the owner on that day. Provided, however that ... whenever a fee simple or lesser interest in real property is purchased, granted, taken or otherwise transferred for a use exempt from taxation under this Act, such property shall be exempt from taxes from the date of the right of possession, payment or deposit of the award therefor.

35 ILCS 205/27(a).

The Special Warrantee Deed (Applicant Ex. No. 4) fixes the date of applicant's right of possession at March 31, 1993. Thus, assuming TRS does not fail to qualify for exemption on other grounds, Section 205/27(a) mandates that its claim for exemption in Docket No. 93-16-1396 be limited to a maximum of 76% of the 1993 assessment year.

While the above discussion verifies applicant's ownership of all parcels at issue in the present proceedings, it does *not* establish that TRS is an entity exempt from taxation under Section 19.5. Therefore, any remaining analysis must focus on the extent to which TRS is such an entity.

Neither the Revenue Act nor TRS's enabling legislation contain any analytic or definitional criteria that would aid the present inquiry. Furthermore, Illinois courts have yet to specifically address whether TRS property is exempt under Section 19.5. Although the Department of Revenue has found some such properties to be exempt, (Applicant Ex. No. 14), it must be remembered that each year sought for tax exemption stands alone and a decision adjudicating tax status for a particular year has no bearing on a subsequent year, even where ownership and use remain the same. Jackson Park Yacht Club v. Department of Revenue, 93 Ill. App.3d 542 (1981).

In Jones, *supra*, the court held that TRS was a "State agency" for purposes of determining whether plaintiff's personal injury suit survived a motion to dismiss for want of subject matter jurisdiction in the circuit court. Plaintiff filed her complaint in the circuit court of Sangamon County rather than the Court of Claims. Defendant subsequently filed a motion to dismiss alleging that

only the latter court had subject matter jurisdiction over the plaintiff's complaint. The trial court granted defendant's motion, whereupon the plaintiff appealed.

In affirming the trial court, which was interpreting a statute vesting the Court of Claims with exclusive jurisdiction over "[a]ll claims against the State for damages in cases sounding in tort, if a like cause of action would lie against a private person or corporation in a civil suit,"<sup>4</sup> the Jones court relied on ITHC, *supra*. There, the Illinois Supreme Court confronted numerous State constitutional law challenges to the State Toll Highway Commission Act, Ill. Rev. Stat. 1953, ch. 121, par. 314(a)(26) *et seq.*

One challenge alleged that the provisions authorizing certain lawsuits against the commission<sup>5</sup> violated Article IV, Section 26 of the Illinois constitution, which (at the time) prohibited the State from being made defendant in any court of law or equity. ITHC, *supra* at 223-224. The court began its analysis by noting that "the statute ... purports to allow an action against the commission itself, and its validity in this respect therefore turns on whether the commission is to be regarded as a mere department of State government or as an independent legal entity." ITHC at 224.

If the commission fell into the former category, the statute would be unconstitutional as authorizing legal actions equivalent to ones in which an agency or department of the State is the real party in interest but the State itself is nominal defendant. *Id.* If, however, the commission fell into the latter, the provision could withstand Constitutional scrutiny because the

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<sup>4</sup>. Jones, *supra* at 54, citing and quoting Ill. Rev. Stat. 1983, ch. 37, par. 439.8.

<sup>5</sup>. Section 27(a) authorized lawsuits against the commission by bondholders; suits for injury to person or property that resulted from acts of the commission or any of its officers, agents or employees done under the Commission's direction were authorized by Section 27(b). ITHC at 223, citing and quoting Ill. Rev. Stat. 1953, ch. 121, pars. 27(a) and 27(b).

commission was among those public bodies subject to suit despite its close relationship to State government. *Id.*

The court began analyzing the classification question by focusing on "... the degree of administrative and financial autonomy which [the commission or any public body] possesses" under the terms of its enabling statute. *Id.* In making this analysis, the court noted that the commission performed functions that were "traditionally performed by the State." *Id.* at 225. It also observed that "[t]wo of its members are officers of the State government, while the others are appointed by the Governor, and may be removed by him." [sic] *Id.*

The court also included the following non-financial criteria in its analysis: the relevant enabling statute provided that the commission's choice of sites for toll highways, as well as its preliminary estimates of costs, were subject to gubernatorial approval; the Attorney General was designated as the commission's legal representative and controlled the selection and performance of the commission's legal staff; the commission could acquire property in its own name subject to the proviso that the toll highways that it constructed were to become part of the regular State highway system whenever the indebtedness incident to their construction was liquidated; and, that the General Assembly made initial appropriations for the commissioners' salaries as well as other expenses related to performance of the commission's duties. *Id.*

With respect to the commission's financial structure, the court noted that "[t]he funds which it obtains from the sale of bonds and from tolls are segregated and may be used only for toll highway purposes." *Id.* The court further indicated that "the State assumes no liability upon the bonds issued by the commission or upon any other contractual obligation which it incurs." *Id.* Thus, "[w]hatever effect a recovery of damages against the commission would have upon the general, tax derived revenues of the State is limited to the remote right which is given the State to receive any surplus remaining when the commission is ultimately dissolved." *Id.*

After reciting these criteria, the court noted that organizations such as the University of Illinois and the State Armory Board have been held subject to suit despite their close relation to the State. *Id.* at 224-225. The court then proceeded to discuss precedents from other states, which it noted did not yield a uniform answer to the question at issue. *Id.* at 226. It did, nevertheless, argue that such precedents manifest "a general agreement that where the liability of the commission would be satisfied from State funds, the commission will be regarded as the alter ego of the State." *Id.*, citing State Highway Com. v. Utah Construction Co., 278 U.S. 194; State Highway Com. v. Kansas City Bridge Co., 81 F2d 689; United Contracting Co. v. DUBY, 134 Ore. 1. It also observed that:

The multiplicity of factors which the courts have considered in reaching a decision of [sic] this question makes it impracticable to extract a simple rule which will fit every situation. *The factor entitled to most weight, in our opinion, is that under no circumstances can the general funds of the State be reached in order to satisfy an obligation of the commission.* That factor, together with the largely independent control of the commission over the construction and maintenance over the construction and maintenance of the proposed toll roads, permits it to be regarded as an independent entity as far as subject to suit is concerned.

*Id.* at 227; See also, Jones, *supra* at 54. (emphasis added).

Section 5/16-158(c) contains a clear mandate requiring the State to assume responsibility for any financial obligations incurred by TRS. This mandate is not limited to ensuring payment of appropriate pensions, retirement annuities or other benefits payable under the system. Rather, it extends to funding certain TRS reserves, guaranteeing payment of any contributions the State is required to make and vouching for all administrative and operational expenses incurred in the normal course of TRS's business. See, 40 **ILCS** 5/16-184, 5/16-185, 5/16-186.3, 5/16-152.1, 5/16-158(a) and 5/16-158(b).

Unless TRS is exempt under Section 19.5, elementary accounting principles dictate that property taxes be included in its operating expenses. The

preceding analysis demonstrates that such taxes would be paid out of the State Treasury. Therefore, consistent with ITHC and Jones, I conclude that TRS is indeed an entity exempt from taxation under Section 19.5.

In making this conclusion, I am not unaware that other provisions of TRS's enabling statute provide it with considerable administrative and political independence from the State. For example, Section 5/16-101 dictates that TRS transact all business, invest all funds and hold all its assets in its own name rather than that of the State itself. Furthermore, Section 5/16-171 authorizes the TRS's governing board "[t]o sue and be sued in the name of the board."

These provisions, together with those that authorize the Board to "[t]o receive any gifts or legacies for the benefit of the retirement system (40 **ILCS** 5/16-177), "rent, lease or acquire such space as may be necessary for the proper administration of the system." (40 **ILCS** 5/16-181.1) and "enter into such agreements and to execute such documents as it [the Board] determines necessary to complete any investment transaction[,]" (40 **ILCS** 5/16-179), vest the Board with managerial authority over TRS's daily business affairs.

One could argue that such a broad grant of authority manifests a legislative intent to allow TRS to operate free from State control whenever possible. I do not find this argument persuasive because ITHC and Jones clearly establish that financial, rather than administrative, considerations are to be given decisive weight. Thus, I conclude that this grant of authority exemplifies the constitutionally-authorized delegation of powers from the General Assembly to an administrative agency (in this case, TRS's governing board), charged with carrying out a particular legislative mandate. *Cf.* ITCH, *supra* at 231-233.

Intervenor seeks to defeat the preceding analysis by relying on Guse, *supra*. There, the court held that the Board of Trustees of the Public School Teachers Pension and Retirement Fund of Chicago (hereinafter "PST&RFOC") was not

an "agency" within the meaning of (and therefore not subject to) the Administrative Procedure Act.

The instant proceeding raises exemption issues that are subject to a much stricter standard of proof than those at issue in Guse. More importantly, the applicable enabling legislation in Guse relieved the State of liability for operating expenses and other financial obligations incurred by the PST&RFOC. The State was also not responsible for making contributions to, or otherwise providing funding for, any benefits payable under the PST&RFOC system.

Here, the applicable enabling legislation neither absolves the State of responsibility for TRS's financial obligations nor relieves it of liability for appropriate contributions. Accordingly, I conclude that payment of such contributions, benefits and operating expenses are State obligations under 40 **ILCS** 5/16-158(c). Therefore, I find Guse factually and legally distinguishable from the present case.

Having determined that TRS is an entity exempt from taxation under Section 19.5, and owns all properties at issue in Docket Nos. 93-16-1323 and 1396, I must now consider the effect of the leaseholds described in Findings of Fact 5 and 6, *supra* at p. 4.

Intervenor argues the leaseholds constitute a profitable use which destroys exemption. Illinois courts have long recognized and accepted intervenor's argument in the context of charitable exemptions. See People ex. rel. Baldwin v. Jessamine Withers Home, 312 Ill. 136 (1924). However, charitable exemptions are different from those granted under Section 19.5 in that the former are based on ownership and use while the latter are based *solely* on ownership.<sup>6</sup>

Section 19.5 nonetheless accounts for leaseholds by providing that:

... the State agency holding title [to the exempt property] shall file the certificate of ownership and use required by Section 19 of this act, together with a copy of any written lease or agreement with respect to parcels

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<sup>6</sup>. See, *supra* at p. 6.

of 1 acre or more in effect on March 30 of the assessment year, or, if none, an explanation of the terms of any oral agreement under which the property is leased, subleased or rented in parcels of 1 or more acres.

Such property shall be assessed to the lessee and the taxes thereon extended and billed to the lessee, and collected in the same manner as property which is not exempt, *and the lessee shall be liable for such amount and no lien shall attach to the property of the State.*

35 **ILCS** 205/19.5. (Emphasis added).

Based on the above provision, as well as the Special Warrantee Deed, (Applicant Ex. No. 4),<sup>7</sup> I conclude the Department's decision in Docket No. 93-16-1396 should be modified as follows: With respect to applicant's ownership interest, said parcels should be exempt for 76% of the 1993 assessment year. However, pursuant to Section 19.5, said exemption should not relieve the lessees of liability for any assessments attributable to their respective interests in said properties or any taxes levied thereon.

With respect to Docket No. 93-16-1323, I reiterate that TRS acquired its ownership interest in the subject properties well before the 1993 assessment year began.<sup>8</sup> For this reason, and because said properties were not leased or subject to any other interest during the 1993 tax year, I conclude they should be exempt from real estate tax for that entire assessment year.

**WHEREFORE, FOR ALL THE ABOVE-STATED REASONS,** it is my recommendation that all properties at issue in Docket Nos. 93-16-1323 be (as identified by the Permanent Index Numbers established in Findings of Fact 2, 3 and 4, *supra* at p. 3) be exempt from property tax for the entire 1993 assessment year.

I further recommend that applicant's ownership interest in all properties at issue in Docket No. 93-16-1396 (as identified by the Permanent Index Numbers established in Finding of Fact 2, *supra* at p. 3) cause said parcels to be exempt from real estate tax for 76% of the 1993 assessment year. However, pursuant to

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<sup>7</sup>. See, *supra* at p. 10.

<sup>8</sup>. See, Finding of Fact 5, *supra* at p. 3.



Section 19.5 of the Revenue Act of 1939, said exemption should not preclude or bar any assessments based on the lessees' interests in the subject properties or prevent the lessees from assuming liability for any taxes imposed thereon.

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Alan I. Marcus,  
Administrative Law Judge

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Date